

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

PHILLIP BURTON HAUSKEN,

Plaintiff,

v.

D LEWIS, JOYCE MORRELL, and
DAWN THOMPSON,

Defendants.

CASE NO. C12-5882 BHS-JRC

ORDER DENYING DEFENDANTS'
MOTION TO STRIKE PLAINTIFF'S
MOTION FOR DEFAULT

The District Court has referred this 42 U.S.C. § 1983 civil rights action to United States Magistrate Judge J. Richard Creatura. The Court's authority for the referral is 28 U.S.C. § 636(b)(1)(A) and (B), and Magistrate Judge Rules MJR3 and MJR4.

Plaintiff has filed a motion asking the Court to enter default judgment (ECF No. 42). Defendants ask the Court to strike plaintiff's motion (ECF No. 43). Defendants argue that default is improper because they have appeared and filed a motion to dismiss (*id.*).

Defendants' motion to dismiss prevented the entry of default while the motion was pending. *Ashby v. McKenna*, 331 F.3d 1148, 1152 (10th Cir. 2003). On September 12, 2013, the Court entered an order adopting in part and declining to adopt in part the Report and

1 Recommendation (ECF No. 40). The Court held that defendants were immune from damages,
2 but the Court also held that plaintiff could proceed with a claim for injunctive relief that would
3 prevent defendants from taking any further funds from his inmate account for the payment of
4 cable television (*id*). Defendants needed to file an answer, or another motion that would prevent
5 the entry of default within 14 days of entry of the Court's order. *See* Fed. R. Civ. P. 12
6 (a)(4)(A). By the end of September, 2013, defendants had defaulted in this action.

7 In November of 2013, the Court entered an order to show cause. The Court's order
8 informed both parties that defendants had "failed to file a timely answer." (ECF No. 41).
9 Defendants took no action for three additional months and have waited for plaintiff to file a
10 motion for default.

11 The ability to obtain default protects a litigant from improper delay. *Swaim v. Moltan*
12 *Co.*, 73 F.3d 711, 716 (7th Cir. 1996). This action has languished for five months because
13 defendants have not filed an answer. Defendants' motion to strike plaintiff's motion for default
14 is denied.

15 Dated this 4th day of March, 2014.

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18 J. Richard Creatura
19 United States Magistrate Judge
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